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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,078	05/31/2001	Thomas D. Taggart	STEU-3250 9319	
5409	7590 05/20/2	03		
ARLEN L. C		EXAMINER		
SCHMEISER, 3 LEAR JET I SUITE 201	OLSEN & WATT LANE	TAWFIK, SAMEH		
LATHAM, NY 12110			ART UNIT	PAPER NUMBER
ŕ			3721 DATE MAILED: 05/20/2003	19

Please find below and/or attached an Office communication concerning this application or proceeding.

<u>.</u>								
Office Action Summary		Applicati	on No.	Applicant(s)	Cd			
		09/871,0	78	TAGGART, THOMAS D.				
		Examine	7	Art Unit				
		Sameh H		3721				
Period fo	The MAILING DATE of this communication a or Reply	ppears on the	e cover sheet with the	correspondence address				
THE I - Exter after - If the - If NO - Failui - Any r	ORTENED STATUTORY PERIOD FOR REF MAILING DATE OF THIS COMMUNICATION nsions of time may be available under the provisions of 37 CFR SIX (6) MONTHS from the mailing date of this communication. period for reply specified above is less than thirty (30) days, a reperiod for reply is specified above, the maximum statutory perion to reply within the set or extended period for reply will, by state eply received by the Office later than three months after the main department adjustment. See 37 CFR 1.704(b).	I.  1.136(a). In no evelph within the stated will apply and wute, cause the app	ent, however, may a reply be utory minimum of thirty (30) d ill expire SIX (6) MONTHS fro lication to become ABANDOI	timely filed lays will be considered timely. om the mailing date of this communication NED (35 U.S.C. § 133).	on.			
1)⊠	Responsive to communication(s) filed on 02	2 May 2003 .						
2a)🔀	<u> </u>							
3)□								
Dispositi	on of Claims							
4)⊠	Claim(s) 20 and 22-66 is/are pending in the	application.						
	4a) Of the above claim(s) 23-34 is/are withdrawn from consideration.							
5)	Claim(s) is/are allowed.							
6)⊠	Claim(s) <u>20,22,35-44,48-59 and 63-66</u> is/are rejected.							
7)🖂	Claim(s) <u>45-47 and 60-62</u> is/are objected to.							
8)[	Claim(s) are subject to restriction and	I/or election r	equirement.					
Applicati	on Papers							
9) 🗌 -	The specification is objected to by the Exami	ner.						
10)[	Γhe drawing(s) filed on is/are: a)□ acc	cepted or b)	objected to by the Ex	aminer.				
	Applicant may not request that any objection to							
11) 🔲 -	The proposed drawing correction filed on	is: a) <u></u> a	pproved b)⊡ disapp	roved by the Examiner.				
	If approved, corrected drawings are required in	reply to this O	ffice action.					
12) 🔲 ¯	Γhe oath or declaration is objected to by the ι	Examiner.						
Priority u	ınder 35 U.S.C. §§ 119 and 120							
13)	Acknowledgment is made of a claim for foreign	ign priority ur	nder 35 U.S.C. § 119	(a)-(d) or (f).				
a)[	☐ All b)☐ Some * c)☐ None of:			-				
	1. Certified copies of the priority docume	ents have bee	n received.					
	2. Certified copies of the priority docume	ents have bee	n received in Applica	ation No				
* 9	3. Copies of the certified copies of the prapplication from the International Elee the attached detailed Office action for a li	Bureau (PCT	Rule 17.2(a)).					
	cknowledgment is made of a claim for dome				tion).			
•	) ☐ The translation of the foreign language p				,			
	Acknowledgment is made of a claim for dome	-	·					
Attachmen	t(s)							
2) Notic	e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review (PTO-948) nation Disclosure Statement(s) (PTO-1449) Paper No(s)	)		ary (PTO-413) Paper No(s) al Patent Application (PTO-152)	. •			

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## **DETAILED ACTION**

## Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 20, 22, 35, 44, 48-59, and 63-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over BOSCH in view of De Stoutz (3,934,042).

the means for providing a plurality of bottles (Figs. On page 3); aseptically disinfecting the plurality of bottles (page 2, column 1); aseptically filling the aseptically disinfected plurality of bottles with the foodstuffs (page 2, columns 1 and 2); and aseptically disinfected plurality of bottles at a rate greater than 100 bottle per minute (page 2, column 1) the machine can be produce 33,600 bottle per hour which is equal to 560 bottles per minute. BOSCH does-not disclose aseptically filling the bottles with aseptically sterilized foodstuffs. However,

Stoutz discloses the step and means for aseptically sterilized foodstuffs (column 1, lines 5-10).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have modified BOSCH's method and apparatus for aseptically bottling foodstuffs by having the step and means for aseptically sterilized foodstuffs, as suggested by Stoutz, in order to increase the shelf life or storability of the treated beverage (column 1, lines 22-24)

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Regarding claim 37 and 51: the reference of the prior art discloses the claimed invention except for the plastic is high density polyethylene. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified COSCH's method for aseptically packaging aseptically sterilized foodstuffs by having plastic with high density polyethylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a mater of obvious design choice. *In re Leshin; supra*.

Regarding claim 39: BOSCH discloses capping the container with aseptically disinfected lid (page 2, column 1).

Regarding claim 40: BOSCH discloses disinfecting the interior of the plurality of containers with a hydrogen peroxide (page 2, column 1).

Regarding claims 41, 43, 52, 53, and 57: BOSCH discloses disinfecting the interior of the plurality of the plurality of container includes the application of the hydrogen peroxide spray and the activation and removal of the hydrogen peroxide using a sterilized air (page 2). BOSCH does not disclose the range of the application of the hot hydrogen peroxide for about 1 second and the removal of the hot hydrogen peroxide using hot air about 24 seconds. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified BOSCH's method for aseptically packaging aseptically sterilized foodstuffs by having range of the application of the hot hydrogen peroxide for about 1 second and the removal of the hot hydrogen peroxide using hot air about 24 seconds, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller, 105 USPQ 233*.

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Regarding claims 42 and 54: BOSCH discloses a feedback control system (page 2, line 3) for maintaining aseptic container conditions.

Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of B. Poole (2,491,015).

Regarding claim 56: BOSCH disclose that disinfecting the container from the outside surfaces (page 2, column 1).

Regarding claims 63 and 64: applicant admitted in the background of the invention that aseptically sterilizing foodstuff (specification; page 2, lines 18-24) "for the aseptic packaging of food products," in order to meet the FDA requirements "the food product must also be processed using an Ultra High Temperature".

Negarding claims 65 and 66:-Bosch-discloses that the bottles are in an upright position during disinfecting, see the Figs.

B. 67 268; Figs solum! OBV.

Allowable Subject Matter

Claims 45-47 and 60-62 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

## Response to Arguments

Applicant's arguments filed 5/2/2003 have been fully considered but they are not persuasive.

Applicant argue in page in page 7 of the arguments that there is no disclosure nor suggestion of aseptically sterilized foodstuffs in Stoutz's reference. The examiner believes such limitations "foodstuffs" would not make a difference to the apparatus claims, because Stoutz's

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apparatus could work for any type of products. Moreover, the applicant admitted in the background of the invention that aseptically sterilizing foodstuff (specification; page 2, lines 18-24) "for the aseptic packaging of food products," in order to meet the FDA requirements "the food product must also be processed using an Ultra High Temperature".

Applicant argue in page 8 of the arguments that the level and type of sterilization in Stoutz's and the present invention are not synonymous, for nowhere in Stoutz is the term "aseptic". The examiner believes that Stoutz's reference discloses sterilizing foodstuffs such as drinks which can be consider as "aseptic" based on the definition of the word "aseptic" which is preventing infection, free or freed from pathogenic microorganisms.

## Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is (703) 308-2809. The examiner can normally be reached on Monday - Friday from 8:00 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rada, Rinaldi can be reached on (703) 308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-7769 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

ST. May 15, 2003

> EUGENE KIM PRIMARY EXAMINER

E-arie, fr. MF & L.; MF -aire, fr. L -arie, it with (budgetary) i with (budgetary) in with (budgetary) a considerated by or descended from early speakers in trated by or descended from early speakers in the construction of the constr S-arie, fr. MF & L; MF -aire, fr. L -aries

E 2 (all rose

2 (all rose ~ one man) b: LIKE la (his an editor) ~ an editor)

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blic b: a unit of value equivalent to a

da \a-sa-fe-ta-da, -fe-; Southern also da \ML asafoetida, fr. Per azā mastic + L la (14c): the fetid gum resin of various One of the carrot family formerly used in medicine in folk medicine as a general problem. in folk medicine as a general prophylacte

ana manner of sitting, fr. aste he sits; akin to (ca. 1934): any of various vogic postures (ca.

and manner of sitting, fr. äste he sits; akin to (ca. 1934): any of various yogic postures; in pl Asante (1721): ASHANTI

An [ME albestron mineral supposed to be on fire, prob. fr. MF, fr. ML asbeston, aliented lime, fr. asbestos inextinguishable, fr. do (507): any of several minerals (as chrysotie) and freshel fibers, that have been implicated and that have been used eso. formerly as and that have been used esp. formerly a

s, az-\ n, pl -to-ses \-, sez\ (1927): a pneu-

nartic ascus]: ascus (ascocarp)
\(\lambda n. pl -a-ses \-sez \ [NL] (ca. 1888): insect by ascarids

sed by ascarids
m. fr. LL ascarid-, ascaris intestinal worm,
by back-formation fr. askarizein to jump,
skairein to gambol] (ca. 1890): any of a
tode worms that includes the common
ides) parasitic in the human intestine
car-i-des \a'skar-2-ide\(1/4/c): ASCARID
L ascendere, fr. ad-+ scandere to climb
a: to move upward
b: to slope uplower level or degree
b: to go back in
succession ~ w 1: to go or move up
i to: OCCUPY (~ the throne) — as-cendbol\( adj) hol\ adj nce \= sen-dən(t)s\ n (1742) : ASCEN-

:-cy \>-'sen-dan(t)-se\ n (1712): govern-

p. of ascendere] (14c) 1: the point of liac that rises above the eastern horizon lac that rises above the eastern horizon position of dominant power or importelative in the ascending line (1591) I a: moving upward: RISSEM) 2 a: SUPERIOR b: DOMINANT

1. 1867): the part of a lowercase letter body of the letter; also: a letter that

99) 1 a : mounting or sloping up-o higher levels, values, or degrees (~ usu. from a more or less prostrate base

IE, fr. L. ascension-, ascensio, fr. ascenascending action as a scending an(t)-shand adj (1594): of or relat-

The Thursday 40 days after Easter observed of chist's ascension into Heaven (1646): rising or tending to rise (1646): 4 at the act of virillation of the act of experiments of the act of the act of carrier of the act of carrier of the act of the act

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Tallowwort, fr. Asklēpias, Greek god of medicine] (1859)

Tallowwort, fr. Asklēpias, the mature fruiting body of an ascomycetous fungi

Tallow fr. Asklēpā (1875); the mature fruiting body of an ascomycetous fungi

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Tallow fr. Askomycetes) or subdivision (Ascomycotina)

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his success). (1972): acquired or assigned arbitrarily (as at birth) (~

ichiled adj (1972): acquired of assignment of the probability of the p

an ascomycete

sodic \az-(,)dik\ n [fr. asdics underwater echo ranging, prob. fr. AntiSubmarine Division (British Admiralty department 1916-18) + -ics]

as far as prep (1523): with regard to: CONCERNING (neatly groomed and, as far as clothes, casual looking —N.Y. Times) (as far as being mentioned in the Ten Commandments, I think it is —Billy Graham) chiefly in oral use

as for prep (1533): with regard to: CONCERNING (as for the others, they'll arrive later)

they'll arrive later)
As gard 'as-,gard, 'az-\ n [ON āsgarthr]: the home of the Norse gods lash 'ash\ n [ME asshe, fr. OE æsc; akin to OHG ask ash, L ornus mountain ash] (bef. 12c) 1: any of a genus (Frazinus) of trees of the olive family with pinnate leaves, thin furrowed bark, and gray branchlets 2: the tough elastic wood of an ash 3 [OE æsc, name of the corresponding runic letter]: the ligature æ used in Old English and some phonetic alphabets to represent a low front vowel \a\a\a\s\n n, often attrib [ME asshe, fr. OE asce — more at ARIO] (bef. 12c)
1: something that symbolizes grief, repentance, or humiliation 2 a

Fash n, often attrib [ME asshe, Ir. OE asse — more at ARID] USE: 12c) 1: something that symbolizes grief, repentance, or humiliation 2 a: the solid residue left when combustible material is thoroughly burned or is oxidized by chemical means b: fine particles of mineral matter from a volcanic vent 3pl: the remains of the dead human body after cremation or disintegration 4pl: deathly pallor (the lip of  $\sim$ es and the cheek of flame — Lord Byron) 5pl: RUINS — ash-less \-los\ adj

the cheek of flame —Lord Byron) 5 pl: RUINS — ash-less \-las\ adj \\
\text{ash wr} (1894): to convert into ash \\
\text{ash amed \pa-'shamd\} adj \text{[ME. fr. OE \(\bar{a}\) scamod, pp. of \(\bar{a}\) scamod and to \\
\text{shame} \text{[bef. 12c)} 1 \text{ a: feeling shame, guilt, or disgrace \text{ b: feeling inferior or unworthy 2: restrained by anticipation of shame \(\pi\) was \times \text{ to beg}\) — \\
\text{ash an-ti \pa-'shan-te, 'shan-\lambda, n, pl Ashanti or Ashantis \(\text{[Twi dsante]}\) \\
\text{(1721)} 1: \text{ a member of a people of southern Ghana 2: the dialect of Akan spoken by the Ashanti people \(\text{ash an-ti \partial postero}\) ash-\text{blond} \(\overline{o}\) ash-\text{blond} \(\overline{o}\) ash-\text{blond} \(\overline{o}\) ash-\text{blond} \(\overline{o}\) ash-\text{blond} \(\overline{o}\) asir \(\text{blond}\) \(\overline{o}\) asir \(\overline{o}\) as \(\

blond (~ hair) Ash-can \ash-kan\ adj (1939): of or relating to a group of 20th cen-

tury American painters who depicted city life realistically (~ school) ash can n (1899) 1: a metal receptacle for refuse 2 slang: DEPTH

ash can n (1899) 1: a metal receptacle for refuse 2 slang: DEPTH CHARGE 1ash-en \a-shən\ adj (bef. 12c): of, relating to, or made from ash wood 2ashen adj (14c): resembling ashes (as in color); esp: deadly pale (a face \approx and haggard)
Ash-er \a-shər\ n [Heb Āshēr]: a son of Jacob and the traditional eponymous ancestor of one of the tribes of Israel ash-fall \ash-fol\ n (1923): a deposit of volcanic ash shall \ash-hior\ n [Heb Āshēr]: a son of Jacob and the traditional eponymous ancestor of one of the tribes of Israel ash-fall \ash-hior\ n [Heb Āshēr]: f. Ash-ke-na-\ n. pl -naz-im \alpha-na-\ n. pl -naz-im \alpha-naz-\ n. pl -naz-

Asian Ju Asiat-ic \a-zhe-'a-tik, -ze-\ adj (1602) sometimes offensive: ASIAN —

Asian flu
Asi-at-ic \a^a-zhē-'a-tik, -zē-\ adj (1602) sometimes offensive: ASIAN —
Asiat-ic \a^a-zhē-'a-tik, -zē-\ adj (1602) sometimes offensive: ASIAN —
Asiatic cholera n (1831): cholera of Asian origin that is caused by virulent strains of the cholera vibrio (Vibrio cholerae)
Asiatic elephant n (1930): ELEPHANT Ib
aside \a-s'sid\ adv (14c) 1: to or toward the side \stepped \alpha 2: away from others or into privacy (pulled him \alpha) 3: out of the way esp. for future use: AWAY \( \text{putting} \simes \text{ savings} \) 4: away from one's thought or consideration \( \text{ jesting} \text{ or } \)
aside \( prep \text{ (1592) obs: BEYOND. PAST } \)
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\a\ abut \a\ kitten, F table \ar\ further \a\ ash \a\ ace \a\ mop, mar \au\ out \ch\ chin \c\ bet \e\ easy \g\ go \i\ hit \i\ ice \j\ job \n\ sing \o\ go \o\ law \oi\ boy \th\ thin \th\ the \\u\ loot \\u\ foot \y\ yet \zh\ vision \a, k, ", ce, ce, ue, ue, \u00ace, \u00e1 see Guide to Pronunciation